

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

ROBERT E. EGGMANN, *in his capacity
as Trustee of the Estate of Joseph W.
Diekemper and Margaret A. Diekemper,*

Plaintiff,

v.

JAMES RICHARD MYERS,
a natural person, et al.,

Defendants.

Civil Case No. 08-cv-757-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Robert Eggmann's Notice of Voluntary Dismissal (Doc. 176), which seeks to dismiss all claims against Defendants Joseph and Margaret Diekemper without prejudice.

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff has an absolute right to dismiss an action against an adverse party at any time before said party serves either an answer or a motion for summary judgment, whichever first occurs.

Here, neither Joseph nor Margaret Diekemper has filed an answer or a motion for summary judgment. Accordingly, the Court acknowledges that this matter is at an end as to said Defendants, **DENIES as moot** Joseph Diekemper's Motion to Appoint Counsel (Doc. 172), and **DIRECTS** the Clerk of Court to enter a corresponding judgment without costs at the close of this case.

IT IS SO ORDERED
DATED: February 7, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE